IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4367 OF 2004

Durgesh Anant Deshpande & Anr. .... Petitioners
Vs.
Smt. Kamalabai Vithal Bhate .... Respondent

Shri M.M. Sathaye for the Petitioners.

Shri K.S. Dewal for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 20, 2004

P.C:

1. Heard the learned Advocates for the parties. Perused the records.

2. The petitioners challenge the concurrent findings by both the Courts below on the point of acquisition of suitable alternative accommodation for the residence of the petitioner No.1 and therefore the petitioners being liable for eviction from the suit premises in terms of the provision of law comprised under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates, Control Act, 1947. While the ground of challenge is that the Courts below have not considered the fact that the petitioner No.1's family comprises of his aged parents and his younger unmarried brother and considering their requirements, and that the alternative accommodation

allotted to the petitioner No.1 in his capacity as the employee of the railways is not suitable.

2. It is not in dispute that the tenancy is in favour of the petitioner No.1 alone and both the Courts below have arrived at the concurrent finding on this aspect. Both the Courts have also held that neither the parents nor the brother of the petitioner No.1 has any tenancy right in the suit premises.

3. It is also not in dispute that the petitioner No.1 has been allotted an alternative accommodation by the railways in view of the fact that the petitioner No.1 is a railway employee. It is also not in dispute that the allotment of accommodation by the railways is as per the entitlement of the petitioner No.1.

4. Considering the fact that the petitioner No.1 is a railway employee and he has been allotted accommodation for his residence as per his entitlement and the petitioner No.1 has accepted the said accommodation, the requirement of law for the eviction of the petitioners under Section 13(1)(l) of the said Act is clearly satisfied. Added to this, both the Courts below have arrived at the concurrent findings, as stated above, and except the petitioner No.1, no other member of his family having any right in the premises, the contention

which is sought to be raised by the petitioners is devoid of substance. The Section 13(1)(l) speaks of the ground for eviction of a tenant, once the tenant either builds or acquires vacant possession of or is allotted with a suitable residence. The expression used in the said provision of law in relation to allotment of suitable residence is that "has been allotted suitable residence". The suitability therefore relates to the tenant. Undoubtedly, in a given case perhaps the Court in its discretion may consider the suitability of the tenant to include the bona fide need of his family member or members. However, that would depend upon the facts of each case. Merely because the parents or the unmarried brother are residing with the tenant, that by itself cannot be a ground to contend that their needs are also to be considered while considering the suitability of the premises allotted for occupation of the tenant. It is more so in a case where the tenant happens to be a Government employee or an employee of the railways. Needless to say that the accommodations which are allotted to the Government employees or the railway employees are in terms of their entitlements. The entitlements are fixed depending upon the suitability of the accommodation considering the designation and class to which the employee belongs to. Being so, once the suitability under the statutory provision under which the employee is entitled for

accommodation is fixed, same would be the suitability under the provision of law comprised under Section 13(1)(l) unless contrary is established by the tenant. Viewed from this angle, therefore, I do not find any illegality committed by the Courts below in rejecting the contention of the petitioners which is sought to be raised with reference to the parents and the younger brother's residence with the tenant in the suit premises.

5. As no other ground is raised in the matter, there is no case for interference in the impugned judgments and therefore the petition is rejected.

6. At the oral request of the learned Advocate for the petitioners, time to vacate the premises is extended till 31-1-2005, subject to that the petitioners along with all the major persons residing with them should file undertaking before the Registrar (Judl.) of this Court assuring that they will deliver the vacant and peaceful possession of the suit premises on or before 31-1-2005 and will not induct any third person therein nor will create any third party interest therein till then. The undertaking to be filed within three weeks. The failure to file the undertaking will automatically result in vacating the order granting the extension of time.

7. Parties may be issued the authenticated copy of this order.